

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

LETICIA AYALA,
Plaintiff,

v.

KILOLO KIJAKAZI,
Defendant.

Case No. 19-cv-00056-LB

**ORDER GRANTING THE
PLAINTIFF'S COUNSEL'S MOTION
FOR ATTORNEY'S FEES**

Re: ECF No. 31

INTRODUCTION

In this Social Security appeal, the parties previously stipulated to remand the case to the Social Security Administration for further proceedings.¹ On remand, the plaintiff received a past-due benefits award.² Her counsel now seeks fees of \$16,089.38, which is within the 25-percent limit in 42 U.S.C. § 406(b) and the representation agreement with his client.³ The court can decide this matter without oral argument. *See* N.D. Cal. Civ. L.R. 7-1(b). The court grants the motion.⁴

¹ Order – ECF No. 26. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Notice of Award – ECF No. 31-3 at 2–8.

³ Mot. – ECF No. 31-1.

⁴ The court declines the plaintiff's counsel's request to apply a 3.21 multiplier. *See id.* at 4–6.

1 **STATEMENT**

2 The Commissioner withheld 25% of the retroactive benefits, or \$16,089.38.⁵ The plaintiff has
3 a fee agreement with her lawyer that provides for a 25-percent contingency fee of the award as of
4 the final decision.⁶ The plaintiff's attorney has already received \$3,621.60 in attorney's fees under
5 the Equal Access to Justice Act (EAJA).⁷ He agreed that he will refund the EAJA fees.⁸

6 The Commissioner filed a response to the plaintiff's motion stating that he "has no objection to
7 the fee request."⁹

8 **ANALYSIS**

9 Under 42 U.S.C. § 406(b), "[w]henver a court renders a judgment favorable to a [social
10 security] claimant . . . , the court may determine and allow as part of its judgment a reasonable
11 fee" for the claimant's counsel, which can be no more than 25 percent of the total of past-due
12 benefits awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee even if
13 the court's judgment did not immediately result in an award of past-due benefits; where the court
14 has rendered a judgment favorable to a claimant by reversing an earlier determination by an ALJ
15 and remanding for further consideration, the court may calculate the 25-percent fee based upon
16 any past-due benefits awarded on remand. *See, e.g., Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th
17 Cir. 2009) (en banc).

18 In considering a motion for attorney's fees under § 406(b), the court must review counsel's
19 request "as an independent check" to ensure that the contingency fee agreement "yield[s]
20 reasonable results." *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) "does
21 not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs
22 courts to review for reasonableness fees yielded by those agreements." *Id.* at 808–09. To evaluate
23 the reasonableness of a fee request under § 406(b), the court considers the character of the

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25 ⁵ Notice of Award – ECF No. 31-3 at 4.

26 ⁶ Fee Agreement – ECF No. 31-5.

27 ⁷ Order – ECF No. 30.

28 ⁸ Mot. – ECF No. 31-1 at 2.

⁹ Response – ECF No. 33.

1 representation and the results achieved. *Id.* at 808; *see also Crawford*, 586 F.3d at 1151. This
2 includes analyzing whether substandard representation justifies awarding less than 25 percent in
3 fees; any delay in the proceedings attributable to the attorney requesting the fee; whether the
4 benefits of the representation are out of proportion to time spent on the case; and the risk counsel
5 assumed by accepting the case. *See Crawford*, 586 F.3d at 1151–52 (citing *Gisbrecht*, 535 U.S. at
6 808). If an attorney “is responsible for delay . . . a reduction [of fees] is in order so that the
7 attorney will not profit from the accumulation of benefits during the pendency of the case in
8 court.” *Gisbrecht*, 535 U.S. at 808 (cleaned up); *see also Crawford*, 586 F.3d at 1151.

9 The court must offset an award of § 406(b) attorney’s fees by any award of fees granted under
10 the EAJA. *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215,
11 1218 (9th Cir. 2012).

12 The 25-percent contingency-fee agreement is within § 406(b)(1)(A)’s ceiling, and the amount
13 is reasonable.

14 CONCLUSION

15 The court finds that a fee award of \$16,089.38 is reasonable under § 406(b). The plaintiff’s
16 counsel must refund the plaintiff the EAJA fees, which results in a net (remaining) fee award of
17 \$12,467.78.

18 **IT IS SO ORDERED.**

19 Dated: June 10, 2022



20
21 LAUREL BEELER
22 United States Magistrate Judge
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